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ABSTRACT

This report proposes regulations for the implementation of California's Uniform Student Residency Act by the state's community colleges. First, background information is provided on three laws: (1) the Uniform Student Residency Act, which establishes rules for use in classifying college students as residents or non-residents; (2) legislation requiring state agencies to review their regulations; and (3) legislation adding financial independence as a factor in determining residency. In addition, the report cites a study by the Auditor General which found that residence questionnaires and admissions applications did not ask enough information to determine residence and that, as a result of misclassifications, not all non-resident students were paying non-resident tuition. Finally, revised regulations for student residence classification are recommended, covering uniform residency requirements, residence determination date, classification procedures, residence questionnaires and proof, physical presence, intent to reside permanently in California, 1-year waiting period, reestablished residence, financial independence, self-supporting and waiting period exceptions, military dependents and personnel, aliens, refugees, credentialed public school employees, students under custody of resident adults, agricultural employment, appeal procedures, refunds, and waivers. The Auditor General's report on misclassification, and attendance and tuition data are appended. (AYC)

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Item 9

Title: Student Residence Classification: Revision and Review of Regulations

Staff Presentation: Tom Nussbaum, General Counsel
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Summary

1. The Uniform Student Residency Act establishes rules for use by California's public institutions of higher education in classifying students as residents or nonresidents. Students classified as residents attend college tuition free while students classified as nonresidents must pay out-of-state tuition.

2. The Board of Governors is charged with responsibility to adopt regulations to implement this Act in the California community colleges.

3. Recent legislation and an investigation by the Auditor General into residence practices in the California community colleges have led staff to recommend that the Board of Governors review and amend these regulations.

4. A draft of the proposed regulations was presented to the Legislative and Administration Committee on May 14 and to the full Board on June 4, 1982. No testimony was offered on the item and no specific changes were requested. At the request of the Legislative and Administration Committee chair, however, additional information has been provided in Appendix C on numbers of students paying nonresident fees and dollar amounts collected.

5. The regulations were revised in response to public comment and on June 25, 1982, the Legislative and Administration Committee recommended them to the full Board for adoption.

Recommended Action

It is recommended that the president declare a public hearing and the Board adopt the proposed regulations which begin on page 6.

JC 820 539

Background

Introduction

The Uniform Student Residency Act, at Education Code Sections 68000 et seq, establishes uniform rules for California's public institutions of higher education to use in classifying students as residents or nonresidents and requires the governing boards at each of those institutions to adopt regulations for its implementation. Students classified as residents attend college tuition-free, while students classified as nonresidents are charged nonresident tuition.

To be classified as a resident, a student must have been a California resident for one year prior to the residence determination date. Residence requires both physical presence in California and intent to make California one's residence.

The Board of Governors adopted regulations to implement the Uniform Student Residency Act in 1973 and amended those regulations in 1974 and 1977.

Recent legislation and an investigation by the Auditor General of residence practices in the California community colleges have led staff to recommend that the Board of Governors review and amend these regulations. These are discussed below:

AB 1111 Review, Chapter 567 of 1979

Recently enacted legislation (AB 1111, Chapter 567, Statutes of 1979) requires each state agency to conduct a comprehensive review of all of its regulations adopted prior to July 1, 1980. Specifically, each agency must evaluate all such regulations against five specific standards, thereby insuring that the regulations are: (1) necessary to implement, interpret or make specific a law or court decision (necessity); (2) promulgated by agencies authorized to do so (authority); (3) clearly written so that persons affected by them can easily understand them (clarity); (4) consistent with existing laws (consistency); and (5) referenced to a specific statute or court decision (reference).

The legislation also created the Office of Administrative Law to oversee the orderly review of regulations by each agency. That office has required review plans to be submitted by each agency, and has prepared a master plan for such review.

Finally, the legislation established a timetable for completion of the review, with the Board of Governors' review to be completed by January 31, 1982. The Office of Administrative Law, however, has extended the agency's deadline to June 30, 1982.

Staff is in the process of compiling the Title 5 review package. The field has been widely solicited (January - June 1981) for recommended changes, and a preliminary draft was widely distributed in March. Board action is anticipated during late spring and early summer of 1982.

While the bulk of the Board's 750 to 800 regulations will be reviewed and compiled in one major package, there will be a few instances in which regulations will be reviewed in conjunction with regular agenda items which propose regulations and which are scheduled during the next several months. This item involves one such instance. The rationale for incorporating the AB 1111 review into this and other items is that as long as the Board is considering a set of regulations on a subject, it should also consider other related changes which come out of the AB 1111 review. Therefore, the entire chapter on student residence classification is presented in this item.

Section 38 of AB 251, Chapter 102 of 1981

The Legislature included a provision in Assembly Bill 251, Chapter 102 of the statutes of 1981 which adds "financial independence" as a factor to be considered when determining the residency of a nonresident student who is seeking reclassification as a resident. The relevant provision states:

> 68044. The governing boards shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification. The adopted rules and regulations shall include provisions requiring that the financial independence of a student classified as a nonresident seeking reclassification as a resident shall be included among the factors to be considered in the determination of residency.
>
> A student shall be considered financially independent for purposes of this section if the applicant meets all of the following requirements: (a) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (b) has not and will not receive more than seven hundred fifty dollars ($750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (c) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

Although the legislation makes financial independence one of many factors to be considered in making a residence determination, it is treated differently than are the other factors.

The Board of Governors has identified factors which a community college district must consider in determining whether a student intends to make California his or her permanent home. Voting in California, maintaining a home in California, having one's family in California, and the other factors listed in proposed section 54024 are all indications of intent to reside in California. Financial independence or dependence is a factor without relevance to this intent.

The durational requirements of this factor are different from that of the other factors. A preponderance of the other factors must come together before the one-year durational requirements can begin to run. Financial independence spans three years prior to the residence determination date.

Finally, the legislature intended this provision to raise revenue for California's public institutions of higher education. It was added to offset cuts made in the budgets of the University of California and the California State Universities. To accomplish this, the Legislature intended financial independence to be a criterion which an out-of-state student had to satisfy before the student could be reclassified as a resident. However, the language of the legislation was not so restrictive.

The proposed regulation Section 54032 gives financial independence more importance than is given the factors which indicate intent. However, it does not go so far as to bar a student who has not been financially independent for three years from being reclassified as a resident. Rather, the proposed regulation states that financial independence shall weigh in favor of finding California residence while lack of financial independence shall weigh against finding California residence. Lack of financial independence in the current or preceding calendar year is more important than financial dependence in earlier years. Financial dependence in the current or preceding year can be overcome only if the parent on whom the student is dependent is a California resident or there is no evidence of continuing residence in another state.

Report of the Auditor General

In the spring and summer of 1981 the Auditor General investigated an allegation that the Chancellor and Board of Governors do not ensure the appropriate classification of nonresident students and that, as a result of misclassification, not all nonresident students pay nonresident tuition. Seventy-six colleges in sixty-six districts were reviewed. The Auditor General's Report was received on February 17, 1982, and is attached as Appendix A.

The report substantiated the allegation. The report found that residence questionnaires and applications for admission did not ask enough information to determine residence. In most cases, physical presence in California was the only factor questioned. The report also found that community colleges were inconsistent in the questions they ask.

The report found that the Board of Governors and Chancellor had not adopted a comprehensive set of procedures and guidelines that would insure uniform residence classifications among community college districts, and that as a result residence rules were inconsistently applied throughout the State.

Regulations are proposed in this item which respond to this report. Proposed Section 54010 states that colleges must obtain evidence of physical presence in California, evidence of intent to make California the permanent home and, where necessary, evidence of financial independence. Proposed Sections 54022 and 54024 clarify each of the two prongs of the residence test. Proposed Sections 54010 and 54026 clarify that the burden is on the student to establish his or her residence so that admissions officers should not be reluctant to classify a student as a nonresident when the student has failed to meet that burden.

The Chancellor's Office asked the Department of Finance to require independent auditors, who annually audit each community college district pursuant to Education Code Section 84040, to examine the district's residency determinations and calculations of nonresident tuition fees beginning with the audits of fiscal year 1981-82. A copy of the instructions that have been developed for the auditors to follow when reviewing this issue for compliance is attached as Appendix B.

The proposed regulations were developed by a group of community college attorneys. They have been sent to each of the 106 admissions officers for comment as well as to the superintendents and presidents. Comments have been received and are reflected in the regulations.

Resolution

Be it resolved by the Board of Governors of the California Community Colleges, acting under the authority of Sections 66700, 68044, 68090 and 71020 of the Education Code, in order to implement, interpret, or make specific Part 41 of Title 5 (commencing with Section 68000) of the Education Code and pursuant to the Administrative Procedures Act, that regulations in Title 5 of the California Administrative Code are added, amended or repealed as follows:

Section 1. Chapter 1 (commencing with Section 54000) of Division 5 of Part VI of Title 5 of the California Administrative Code is repealed.

Section 2. Chapter 1 (commencing with Section 54000) of Division 5 of Part VI of Title 5 of the California Administrative Code is added to read:

CHAPTER 1. STUDENT RESIDENCE CLASSIFICATION

54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in Part 41 (commencing with Section 68000), of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, 68090, and 71020, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

Comment: Section 54000 is added to provide reference to pertinent sections of the Education Code. This will avoid the necessity for repetition of statutory provisions in regulations.

54002. Residence Determination Date.

"Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

NOTE: Authority cited: Sections 66700, 68023, 68044, 68090, 71020, Education Code. Reference: Section 68023, Education Code.

Comment: This reenacts current Section 54005.9. Authority and reference have been added.

54010. Residence Classification Procedures.

(a) Residence classification shall be made for each student at the time applications for admission are accepted. Residence classification shall be made whenever a student has not been in attendance for more than one semester or quarter.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the permanent home, and, if the student was classified as a nonresident in the preceding term, financial independence.

(c) Community college districts shall require applicants to supply information as specified in this chapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

NOTE: Authority cited: Sections 66700, 68004, 68090, 71020, Education Code. Reference: Sections 68044, 68062, Education Code.

Comment: This is a revision of current Section 54010. It is revised to add the financial independence requirement and to make clear that the

admissions officer must obtain evidence of intent as well as of physical presence. The admissions officer is required to weigh the evidence presented by the student and then determine whether the student has established residence.

In response to public comment, Section 54010(a) was revised to not require new residence classification each session. If a student maintains continuous attendance, then the student will not have given up California residence. The regulation as revised allows a community college district to rely on its first residence classification unless the student has dropped out of the district for more than one semester or quarter. It is possible that some students may give up their California residence in an absence of one semester or quarter. However, it is believed that their numbers would not be great enough to justify the expense of redetermining residency status for every student who takes a one-term leave.

54012. Residence Questionnaires.

(a) Each community college district shall use a residence questionnaire in making residence classifications.

(b) The residence questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of Section 54024.

(c) The questionnaire shall ask each student under 19 years of age where the parent has maintained his or her home for the last two years and whether the parent has engaged in any activity listed in subsection (f) of Section 54024.

(d) If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of Section 54024, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (f) of Section 54024.

(e) The Chancellor shall provide a sample residence questionnaire which districts may use in complying with this requirement.

NOTE: Authority cited: Sections 66700, 68044, 71020, Education Code. Reference: Sections 68044, 68062, Education Code.

Comment: The Auditor General's report revealed a great variation in community college district residence determination practices. The report also revealed that community college districts are not asking sufficient information to make an accurate residence determination. This section is intended to give community college districts guidance in soliciting information from which residence classifications can be made.

54020. Residence.

In order to establish a residence, it is necessary that there be a union of act and intent. To establish residence, a person capable of establishing residence in California must couple his or her physical presence in California with objective evidence that the physical presence is with the intent to make California the permanent home.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Sections 68017, 68060, 68061, 68062, Education Code.

Comment: Section 54010 is added in response to the report of the Auditor General. It clarifies that mere physical presence is not sufficient to establish residence and directs admissions officers to look for an intent to make California the permanent home that is coupled with California residence.

54022. Physical Presence.

(a) A person capable of establishing residence in California must be physically present in California for one year prior to the residence determination date to be classified as a resident student.

(b) A temporary absence for business, education or pleasure will not result in loss of California residence if, during the absence, the person always intended to return to California and did nothing inconsistent with that intent.

(c) Physical presence within the state solely for educational purposes does not constitute establishing California residence regardless of the length of that presence.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Sections 68017, 68060, 68061, 68062, Education Code.

Comment: Section 54022 is also added in response to the Auditor General's report. It clarifies the first requirement for residence, physical presence.

54024. Intent.

(a) Intent to make California the permanent home may be manifested in many ways. No one factor is controlling.

(b) A student who is over 19 years of age and who has maintained a home in California continuously for the last two years may be presumed to have the intent to make California the permanent home unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(c) A student who is under 19 years of age may be presumed to have the intent to make California the permanent home if both the student and his parent have maintained a home in California continuously for the last two years unless the student has evidenced a contrary intent by having engaged in any of the activities listed in subsection (f) of this section.

(d) A student who does not meet the requirements of subsection (b) or (c) of this section shall be required to provide evidence of intent to make California the permanent home as specified in subsection (e) of this section.

(e) Objective manifestations of intent to establish California residence include but are not limited to:

(1) Ownership of residential property or continuous occupancy of rented or leased property in California.

(2) Registering to vote and voting in California.

(3) Licensing from California for professional practice.

(4) Active membership in service or social clubs.

(5) Presence of spouse, children or other close relatives in the state.
(6) Showing California as home address on federal income tax form.
(7) Payment of California state income tax as a resident.
(8) Possessing California motor vehicle license plates.
(9) Possessing a California driver's license.
(10) Maintaining permanent military address or home of record in California while in armed forces.
(11) Establishing and maintaining active California bank accounts.
(12) Being the petitioner for a divorce in California.

(f) Conduct inconsistent with a claim of California residence includes but is not limited to:
(1) Maintaining voter registration and voting in another state.
(2) Being the petitioner for a divorce in another state.
(3) Attending an out-of-state institution as a resident of that other state.
(4) Declaring nonresidence for state income tax purposes.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Sections 68017, 68060, 68061, 68062, Education Code.

Comment: Section 54024 is also added in response to the Auditor General's report. Determining whether a student has the requisite intent to make California the permanent home is difficult for admissions officers and the Auditor General's report indicates that many have merely ignored this prong of the test for residence. This section sets forth criteria which should be used in evaluating intent. Criterion (e)(5) was not in the Board's prior regulations and most of the other criteria have been substantially revised for clarity.

Subsection 54024(b) has been substantially revised to reflect public comment. In the draft of this regulation circulated for discussion, a student could be presumed to have the intent to make California the permanent home only if he or she had lived in California continuously for the previous five years. At the meeting of the Northern Section of the California Association of Community College Registrars and Admissions Officers, many admissions officers expressed the concern that this would result in unnecessary personal screening of many students who, on closer scrutiny, would be found to be California residents. Therefore, this was reduced to two years. This allows a community college district to presume a student is a California resident if the student has lived in California for two years and has not engaged in any of the activities in 54024(f).

The subsection was also revised to reflect that a minor's residence is derived from his or her parent.

54026. Burden.
The burden is on the student to demonstrate clearly both physical presence in California and intent to establish California residence.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Section 68041, Education Code.

Comment: The addition of this section is in response to questions from admissions officers and to situations in which the student's burden was disputed. Admissions officers have been reluctant to classify a student as a nonresident for fear that they would have the burden of proving the student's nonresidence. This section clarifies the intent of Education Code Section 68014 and places the burden on the student.

54028. One-Year Waiting Period.

The one-year residence period which a student must meet to be classified as a resident does not begin to run until the student both is present in California and has manifested clear intent to become a California resident.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Sections 68017, 68060, 68061, 68062, Education Code.

Comment: This section clarifies that the one-year waiting period begins to run only after the student has manifested intent to make California his or her residence rather than when the student arrives in California.

54030. Reestablished Residence.

If a student or the parents of a minor student relinquish California residence after moving from the state, one full year of physical presence, coupled with one full year of demonstrated intent to be a California resident, is required to reestablish residence for tuition purposes.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020 Education Code. Reference: Sections 68017, 68060, 68061, 68062, Education Code.

Comment: This section clarifies that a student who gives up his or her California residence must reestablish that residence and have that reestablished residence for one year prior to being classified a resident student.

54032. Financial Independence.

(a) A student seeking reclassification as a resident, who was classified as a nonresident in the preceding term, shall be determined financially independent or dependent in accordance with Education Code Section 68044.

(b) A student who has established financial independence may be reclassified as a resident if the student has met the requirements of Section 54020 for one year prior to the residence determination date.

(c) In determining whether the student has objectively manifested intent to establish California residence, financial independence shall weigh in favor of finding California residence, and financial dependence shall weigh against finding California residence.

(d) Financial dependence in the current or preceding calendar year shall weigh more heavily against finding California residence than shall financial dependence in earlier calendar years. Financial dependence in the current or preceding calendar year shall be overcome only if (1) the parent on whom the student is dependent is a California resident, or (2) there is no evidence of the student's continuing residence in another state.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Section 68044, Education Code.

Comment: Section 54016 is added in response to Section 38 of Chapter 102 of 1981 (Assembly Bill 251) which requires the Board of Governors to adopt rules and regulations for its implementation. See "Background" for a complete discussion of this section.

54040. Self-Supporting Exception.

Any student claiming application of the self-supporting exception pursuant to Education Code Section 68071 shall provide evidence to the admissions officer such as: documentation, including W-2 forms or a letter from the employer, showing earnings for the year immediately preceding the residence determination date of attendance, a statement that the student has actually been present in California for said year (short absences from the state for business or pleasure will not preclude the accumulation of time), and a statement showing all expenses of the student for said year.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Sections 68044, 68071, 68090, Education Code.

Comment: This section reenacts former Section 54031. Authority and reference have been added.

54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to Section 68074 of the Education Code should provide the college admissions officer with a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date or is outside the continental United States on active duty after having been transferred immediately and directly from a California duty station. A statement that the student is a dependent of the military person for an exemption on federal taxes should also be provided.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Sections 68044, 68074, Education Code.

Comment: This section reenacts former Section 54032. Authority and reference have been added.

54042. Member of Military.

A student claiming application of Section 68075 of the Education Code must provide the admissions officer with a statement from the student's commanding officer or personnel officer that the assignment to active duty in this state is not for educational purposes. The student should also produce evidence of the date of assignment to California.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Sections 68044, 68075, Education Code.

Comment: This section reenacts former Section 54033. Authority and reference have been added.

54043. Adult Aliens.

To be classified as a resident student, an adult alien shall:

(a) Have California residence for a period of one year prior to the residence determination date in accordance with the requirements of Sections 54020, 54022, and 54024.

(b) Show to the admissions officer a document issued by the Immigration and Naturalization Service evidencing that the alien has been lawfully admitted to the United States for permanent residence for one year prior to the residence determination date.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Section 68076, Education Code.

Comment: This is a revision for clarity of the present regulations. The substance of the regulation is the subject of litigation to which the Chancellor is a party and in which individual community college districts face substantial potential liability, Garcia v. Hayward. Therefore, substantive revisions are not recommended at this time. The final clause was added to subsection (a) for clarity in response to public comment.

54044. Minor Aliens.

To be classified as a resident student, a minor alien shall:

(a) Reside with a parent who has had California residence in accordance with Sections 54020, 54022 and 54024 for one year prior to the residence determination date, and

(b) Show to the admissions officer documents issued by the Immigration and Naturalization Service evidencing that the minor and the minor's parent have been lawfully admitted to the United States for permanent residence for one year prior to the residence determination date.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Section 68076, Education Code.

Comment: This is a revision for clarity of the current regulation. It is subject to the same litigation as is Section 54043. The section does not require that the minor have lived with the parent for one year,

but does require that the minor live with the parent at the time of residence determination and that the parent have resided in California for one year. The regulation was revised for clarity in response to public comment.

54045. Refugees.

A student claiming exemption from nonresident tuition pursuant to Education Code Section 84521.6 shall provide the admissions officer with documentation from the Immigration and Naturalization Service evidencing that the student is a refugee and shall establish that he or she has been a California resident for one year in accordance with Sections 54020, 54022 and 54024.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Section 84521.6, Education Code.

Comment: This regulation implements Chapter 75 of 1982 (Assembly Bill 1374). The final clause was added for clarity in response to public comment.

54046. Public School Employee Holding Valid Credential.

A student claiming residence status pursuant to Section 68078 of the Education Code should provide the admissions officer with a statement from the employer showing employment by a public school in a full-time position requiring certification qualifications for the college year in which the student enrolls. The student must also show that he or she holds a credential and will enroll in courses necessary to obtain another type of credential authorizing service in the public schools, or that the student holds a credential issued pursuant to Section 87274 of the Education Code and is enrolled in courses necessary to fulfill credential requirements.

NOTE: Authority cited: Sections 66700, 68044, 68090, 71020, Education Code. Reference: Sections 68044, 68078, Education Code.

Comment: This section reenacts former Section 54036. Authority and reference have been added.

54047. Student Under Custody of Resident Adult.

A student claiming residence under provisions of Section 68073 of the Education Code shall provide the college admissions officer with evidence that the adult or adults with whom the student has resided has had California residence for 1 year immediately preceding the residence determination date, and further evidence that the student has resided with such adult or adults for a period of not fewer than 2 years.

NOTE: Authority cited: Sections 66700, 68044, 68090, Education Code. Reference: Sections 68044, 68073, Education Code.

Comment: This section reenacts former Section 54038. Authority and reference have been added.

54048. Agricultural Employment.

A student claiming residence pursuant to Section 68100 of the Education Code shall provide the admissions officer with either (a) or (b):

(a) Evidence that the student's parent with whom the student is living earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years, and that the parent lives within the district. If the parent of such student had sufficient income to incur personal income tax liability for federal and/or state purposes, proof that the student was claimed as a dependent on federal or state personal income tax returns shall also be required.

(b) Evidence showing the student himself or herself earns a livelihood primarily by performing agricultural labor for hire in California and other states and that such labor has been performed in California for at least two months in each of the preceding two years.

As used in this section agricultural labor for hire means seasonal employment in connection with actual production of agricultural crops, including seeding, thinning and harvesting.

NOTE: Authority cited: Sections 66700, 68044, 68040, 68100, Education Code. Reference: Sections 68044, 68100, Education Code.

Comment: This section reenacts former Section 54039. Authority and reference have been added.

54050. Exceptions from the One-Year Waiting Period.

Those exceptions from payment of nonresident tuition provided by Education Code Sections 68070 (certain minors), 68074 (military dependents), and 68075 (military members) apply only during the first year of the student's current physical presence in California.

NOTE: Authority cited: Sections 66700, 68044, 68090, Education Code. Reference: Sections 68044, 68070, 68074, 68075, Education Code.

Comment: This section reenacts former section 54040. Authority and reference have been added. The section has been revised for clarity in response to public comment.

54060. Appeal Procedure.

(a) A community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

(b) Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community

college district shall establish procedures for appeals of residence classifications.

(c) The Chancellor will advise community college districts on issues in residence classification. However, the student shall have no right of appeal to the Chancellor or Board of Governors.

NOTE: Authority cited: Sections 66700, 68044, 68090, Education Code.
Reference: Sections 68044 and 68090, Education Code.

Comment: Current regulations do not require community college districts to notify students of their residence classification within a set time. Nor do they require community college districts to have procedures for appeal of residence classifications. The current regulations merely allow the student to appeal his classification to the district superintendent. The proposed regulation will allow the community college district to use its student grievance procedure or other procedure for these appeals.

54070. Refunds.

The governing board of each community college district shall adopt rules providing for refund of the following nonresident tuition fees:

(a) Those collected in error.

(b) Those refundable as a result of a reduction of the educational program at the community college for which the fees have been paid.

(c) Those refundable as a result of the student's reduction of units or the student's withdrawal from an education program at the community college for which fees have been paid, where reduction or withdrawal is for reasons deemed sufficient by the district governing board.

NOTE: Authority cited: Sections 66700, 68044, 68090, Education Code.
Reference: Sections 68044, 68090, Education Code.

Comment: This section reenacts former Section 54070. Authority and reference have been added.

54072. Waiver.

The community college district may waive nonresident tuition fees which were not collected in a previous session where:

(a) The fees were not collected as a result of the district's error and not through the fault of the student, and

(b) To collect the fees would cause the student undue hardship.

No state funds may be collected for the attendance of a student for whom fees were waived pursuant to this section.

NOTE: Authority cited: Sections 66700, 68044, 68090, Education Code.
Reference: Sections 68044, 68090, Education Code.

Comment: This section restates the Chancellor's Office opinion and is added in response to the concern expressed by several community college districts that authority to grant this waiver should be expressed.

APPENDIX A

THE AUDITOR GENERAL'S
REPORT OF INVESTIGATION I-1005

ALLEGATION

The California Community Colleges (CCC) does not ensure the appropriate classification of nonresident students.* As a result of misclassification, not all nonresident students pay tuition fees required by the California Education Code.

INVESTIGATIVE FINDINGS

We substantiated the allegation. We found that most districts throughout the State use inadequate methods to determine residence as defined by the California Education Code. Also, on a statewide basis, districts do not request consistent residence information from students. These problems occur in part because the CCC has neither developed nor given districts a comprehensive set of standardized guidelines for determining residence classification. Misclassifying nonresident students as residents would mean that the colleges in 1981-82 would not collect an average of $2,200 in tuition annually for each misclassified student taking a class load of 15 units per term.

We reviewed the students' applications for admission and the procedures used to determine students' residency status at 76 community colleges throughout the State to assess the effectiveness of residency questionnaires. These colleges represented 66 of the 70 college districts. Although our review identified weaknesses in the districts' processes for determining residency, we did not attempt to determine the number of students misclassified or the amount of nonresident tuition that has not been collected.

* The term California Community Colleges, as used in this report, refers to the Board of Governors of the California Community Colleges and its chief executive officer, the Chancellor. Districts refers to the 70 California Community College districts. Colleges refers to the 107 California Community College campuses.

Insufficient Information to Determine Residence

The California Education Code provides that a person can become a California resident if he or she has demonstrated a union of act and intent. Specifically, the California Administrative Code defines "act" as the physical presence in California, and it further provides that nonresidents are students who have not had residence in the state for more than one year. The code contains several indicators that measure "intent"; these indicators include maintaining a California driver's license and vehicle registration; voting in California elections and not in any other state's elections; satisfying California personal income tax obligations; and maintaining savings and checking accounts in California banks or savings and loans. Before becoming a California resident, therefore, the student may be required to show that he or she has been in the State for more than one year and has taken some of the steps listed above to indicate an intent to remain in the State.

Our survey indicated that, on a statewide basis, colleges request insufficient information to determine residency. Most applications for admission do not provide enough information for colleges to determine how long a student has lived in California and whether the student intends to become a resident. Most colleges we reviewed attempt to determine a student's presence in California; however, over 75 percent of these colleges use presence in California as the sole indicator of legal residence. Only 18 colleges ask for information about a student's intent to become a resident. Without identifying whether students intend to become residents, colleges cannot properly classify those students who may have been present in California for over one year but who are still legal residents of another state.

Further, some questions on applications are vague and may result in inappropriate responses from students. For example, less than half of the colleges with questions that use the terms "legal" and "permanent" for residence or address attempt to define such terms so that students may respond appropriately. Additionally, some questions simply do not elicit sufficient information for college personnel to determine a student's residency status.

We further found that almost two-thirds of the colleges in our review identify individuals who are in the military or who are dependents of military personnel; however, only three colleges ask these students for the state of legal residence certified on their wage and earnings statement. Among various military records, this statement is the only indicator of military personnel's current state of legal residence.

Inconsistent Residency Information

The California Education Code requires the CCC to apply consistent residency requirements throughout the State. However, we found that colleges throughout the State vary in the kinds of information they require students to provide regarding residency. As a result, the CCC cannot ensure that colleges uniformly evaluate and classify students. The following two examples demonstrate how the residence information requested by colleges varies.

First, colleges do not consistently ask the same questions about how long a student has been present in California. At least 39 colleges ask students whether they have resided in California sometime during the last year, while some ask students if they have resided in California for longer than one year. Still other colleges ask for information about a student's residence for the previous 18 months, 2 years, and, in an extreme example, 5 years.

Second, most unmarried students under 18 assume the legal residence of their parents. However, all colleges do not ensure that students who have the same legal residence as their parents meet residency requirements. While some colleges require that students provide information about their parents' legal residence, others do not.

Lack of Standardized Guidelines

The CCC has not developed a comprehensive set of procedures and guidelines for uniform residence classification among the districts. Some college personnel we interviewed felt that such standard guidelines would assist them in making consistent decisions on students' residency status. Also, some personnel expressed a need for standard residence questions that would be used by all districts without variation. Without standardized procedures, districts cannot uniformly evaluate and classify students' residency status.

Conclusion

The California Community Colleges cannot ensure that colleges are appropriately classifying nonresident students because not all colleges receive adequate information to enable them to determine residence properly. Also, the CCC does not ensure that students are consistently classified in all the districts. Furthermore, the CCC has not provided districts with a standard format for eliciting residency information, nor has it provided districts with comprehensive guidelines to determine residency consistently. Consequently, nonresident students throughout the State may be misclassified or inconsistently classified, and the correct tuition fees may go unpaid.

SUBJECT: Residency Determination and Nonresident Tuition Fees

BACKGROUND:

Whether a student is classified as a resident or nonresident has an effect on state aid. The Education Code generally provides that a district's entitlement to State aid is increased or decreased depending on the increase or decrease in attendance of California residents during a fiscal year. On the other hand, the attendance of persons classified as nonresidents is supported by the nonresident tuition fee such persons are required to pay. The classification of a student as a "resident" or "nonresident" is prescribed by both provisions of the Education Code and regulations of the Board of Governors.

COMPLIANCE AUDIT OBJECTIVE:

Determine whether the district has determined residency in accordance with the Education Code and Title 5 and has administered the nonresident tuition fee in accordance with Section 76140 of the Education Code.

CRITERIA:

Sections 68000-68043, 68050-68090, 68100, 68130, 68132, 76140, 76142 and 76143 of the Education Code. (Education Code Section 68081, 68083 and 68132 were repealed as of January 1, 1982.)

Title 5 of the California Administrative Code, Sections 54000-54082.

California Community Colleges, Student Attendance Accounting Manual, July 1977, Pages 3.01-3.27.

AUDIT PROCEDURES:

Determine that:

A. Each student has been classified by the college of enrollment as a "resident," "nonresident," or "nondistrict resident" as required by the provisions of Section 54000 of Title 5 of the California Administration Code, and Section 68040 of the Education Code.

B. Residency classification determination is in accordance with Sections 68010-68044 and 68060-68083 of the Education Code.

C. Evidence supporting residency classification is in accordance with Title 5 of the California Administrative Code, Sections 54010-54039.

D. Average Daily Attendance was not claimed for the attendance of nonresident students except as authorized by Section 78462 of the Education Code.

E. All nonresident students were either charged a nonresident tuition fee or entitled to an exemption as provided in Sections 76140 and 76142 of the Education Code.

F. The method of calculating the nonresident tuition fee is in accordance with Section 76140 of the Education Code.

CHANCELLOR'S OFFICE
CALIFORNIA COMMUNITY COLLEGES
INFORMATION SYSTEMS PROJECT
06/09/82

CENSUS STUDENT DATA SYSTEM

UNITS ATTEMPTED BY RESIDENCE STATUS FOR CREDIT STUDENTS
FALL 1980

DISTRICT	RESIDENTS	UNITS ATT. RESIDENTS	AVG. UNITS RESIDENTS	NONRESIDENTS	UNITS ATT. NONRESIDENTS	AVG. UNITS NONRESIDENTS	TOTAL KNOWN ENROLLMENT	TOTAL UNITS ATT.	STUDENTS WITH UNKNOWN RESIDENCE
ALLAN HANCOCK	8579	59,892.5	7.0	155	1,389.0	9.0	8734	61,281.5	1
ANTELOPE VALLEY	6807	44,535.5	6.5	85	813.5	9.6	6892	45,349.0	10
BARSTOW	0	.0	.0	0	.0	.0	0	.0	0
BUTTE	0	.0	.0	0	.0	.0	0	.0	0
CABRILLO	10710	83,639.0	7.8	281	3,285.0	11.7	10991	86,924.0	161
CERRITOS	21230	151,823.0	7.2	392	4,160.0	10.6	21622	152,983.0	2
CHAFFEY	12062	96,637.0	8.0	195	2,338.0	12.0	12257	98,975.0	2
CITRUS	8941	72,635.0	8.1	195	2,427.0	12.4	9136	75,062.0	259
COACHELLA VALLEY	6265	39,769.0	6.3	104	1,285.0	12.4	6369	41,054.0	0
COAST	70869	389,094.5	5.5	960	9,961.0	10.4	71829	399,055.5	128
COMPTON	5888	43,862.0	7.4	577	7,816.5	13.5	6465	51,678.5	0
CONTRA COSTA	34374	246,958.9	7.2	340	3,384.0	10.0	34714	250,342.9	0
EL CAMINO	0	.0	.0	0	.0	.0	0	.0	0
FOOTHILL-DE ANZA	33491	236,960.5	7.1	188	1,817.5	9.7	33679	238,778.0	5122
FREMONT-NEWARK	8104	58,267.0	7.2	138	1,756.5	12.7	8242	60,023.5	0
GAVILAN	3031	23,349.5	7.7	93	1,215.5	12.4	3129	24,565.0	0
GLENDALE	9216	70,507.0	7.7	595	7,425.0	12.5	9811	77,932.0	49
GROSSMONT	16980	133,135.5	7.8	270	2,694.0	10.0	17250	135,829.5	0
HARTNELL	7544	50,068.5	6.6	129	1,519.0	11.8	7673	51,587.5	7
IMPERIAL VALLEY	4010	40,620.0	10.1	108	1,270.0	11.8	4118	41,890.0	0
KERN	17390	114,133.0	6.6	453	3,450.0	7.6	17843	117,583.0	287
LAKE TAHOE	1565	9,969.2	6.4	51	231.0	4.5	1616	10,200.2	6
LASSEN	2849	18,215.5	6.4	101	1,355.4	13.4	2950	19,570.9	1
LONG BEACH	27068	165,728.5	6.1	367	3,514.5	9.6	27435	169,243.0	0
LOS ANGELES	130365	981,000.0	7.5	1747	18,768.0	10.7	132112	999,768.0	365
LOS RIOS	43597	342,940.0	7.9	861	9,403.5	10.9	44458	352,343.5	0
MARIN	10528	77,018.2	7.3	221	2,340.0	10.6	10749	79,358.2	2
MENDOCINO	3097	15,764.0	5.1	13	108.5	8.3	3110	15,872.5	122
MERCED	7479	58,231.0	7.8	460	4,181.0	9.1	7939	62,412.0	8
MIRA COSTA	5962	45,000.0	7.5	112	1,223.5	10.9	6074	46,223.5	0
MONTEREY PENINSULA	7537	55,036.0	7.3	317	2,886.0	9.1	7854	57,922.0	0
MOUNT SAN ANTONIO	20848	162,253.0	7.8	237	2,654.0	11.2	21077	164,907.0	0
MOUNT SAN JACINTO	3047	19,944.0	6.5	87	759.0	8.7	3134	20,703.0	1
NAPA	5343	41,226.0	7.7	73	985.0	13.5	5416	42,211.0	15
NORTH ORANGE	27043	200,640.5	7.4	0	.0	.0	27043	200,640.5	4568
PALO VERDE	569	3,917.7	6.9	20	187.0	9.3	589	4,104.7	0
PALOMAR	16190	127,574.0	7.9	387	4,507.5	11.6	16577	132,081.5	8
PASADENA	18767	142,694.5	7.6	885	10,852.0	12.3	19652	153,546.5	340

APPENDIX C

CHANCELLOR'S OFFICE
CALIFORNIA COMMUNITY COLLEGES
INFORMATION SYSTEMS PROJECT
06/09/82

CENSUS STUDENT DATA SYSTEM

UNITS ATTEMPTED BY RESIDENCE STATUS FOR CREDIT STUDENTS
FALL 1980

DISTRICT	RESIDENTS	UNITS ATT. RESIDENTS	AVG. UNITS RESIDENTS	NONRESIDENTS	UNITS ATT. NONRESIDENTS	AVG. UNITS NONRESIDENTS	TOTAL KNOWN ENROLLMENT	TOTAL UNITS ATT.	STUDENTS WITH UNKNOWN RESIDENCE
PERALTA	38919	252,651.5	6.5	338	3,874.0	11.5	39257	256,525.5	28
RANCHO SANTIAGO	18031	115,686.0	6.4	739	7,864.5	10.6	18770	123,550.5	20
REDWOODS	10390	67,924.5	6.5	93	956.5	10.3	10483	68,881.0	43
RIO HONDO	9576	74,883.0	7.8	374	5,077.5	13.6	9950	79,960.5	165
RIVERSIDE	14810	103,631.5	7.0	252	2,199.0	8.7	15062	105,830.5	1
SADDLEBACK	24548	148,472.2	6.0	0	.0	.0	24543	148,472.2	776
SAN BERNARDINO	18387	130,213.4	7.1	286	2,787.7	9.7	18673	133,001.1	1
SAN DIEGO	43629	230,505.0	5.3	1593	10,091.0	6.3	45222	240,596.0	33
SAN FRANCISCO	24542	195,168.5	8.0	807	8,242.0	10.2	25349	203,410.5	30
SAN JOAQUIN DELTA	11580	76,721.3	6.6	398	4,071.0	10.2	11978	80,792.3	1482
SAN JOSE	19945	133,178.5	6.9	1246	14,333.5	11.5	21191	152,512.0	0
SAN LUIS OBISPO	5724	48,173.5	8.4	124	1,519.5	12.3	5848	49,693.0	0
SAN MATEO	33179	212,627.5	6.4	430	5,606.5	13.0	33609	218,234.0	299
SANTA BARBARA	9397	76,358.9	8.1	329	3,674.0	11.2	9726	80,032.9	10
SANTA CLARITA	3516	25,806.0	7.3	54	645.0	11.9	3600	26,451.0	0
SANTA MONICA	15968	108,730.5	6.8	2375	20,384.0	8.6	18343	129,114.5	105
SEQUOIAS	7405	63,419.0	8.6	81	1,115.0	13.8	7486	64,534.0	0
SHASTA-TEHAMA-TRINITY	10505	70,922.0	6.8	58	682.0	11.8	10563	71,604.0	1
SIERRA	9538	66,733.0	7.0	105	1,001.5	9.5	9643	67,734.5	13
SISKIYOU	1934	13,808.5	7.1	64	1,059.0	16.5	1998	14,867.5	14
SOLANO COUNTY	9473	69,832.6	7.4	344	2,245.5	6.5	9817	72,078.1	12
SONOMA COUNTY	18926	121,652.5	6.4	409	3,088.5	7.6	19335	124,741.0	0
SOUTH COUNTY	18780	119,163.0	6.3	202	2,117.0	10.5	18982	121,280.0	2
STATE CENTER	17465	153,687.0	8.8	293	3,705.5	12.6	17753	157,392.5	2
SWEETWATER	12291	98,711.5	8.0	534	5,369.0	10.1	12825	104,080.5	38
VENTURA	27550	206,398.2	7.5	424	4,186.5	9.9	27974	210,584.7	2
VICTOR VALLEY	3660	28,004.0	7.7	118	720.5	6.1	3778	28,724.5	4
WEST HILLS	2339	15,332.1	6.6	72	824.5	11.5	2411	16,156.6	11
WEST KERN	967	5,975.5	6.2	101	1,294.0	12.8	1068	7,269.5	52
WEST VALLEY	23211	160,772.5	6.9	300	3,034.5	10.1	23511	163,807.0	146
YOSEMITE	15403	104,373.5	6.8	273	2,781.5	10.2	15676	107,155.0	0
YUBA	8541	62,758.5	7.3	99	850.5	8.6	8640	63,609.0	2
TOTAL	1107496	7,790,314.7	7.0	24117	247,363.1	10.3	1131613	8,037,677.8	14756

CALIFORNIA COMMUNITY COLLEGES

ANNUAL ATTENDANCE ADA
FISCAL YEAR 1980-81

District	Total	Apportionment ADA	Attendance Hours Converted to ADA Nonresident	Nonresident Tuition Charged
Allan Hancock	6,734	6,537	159	$ 119,103
Antelope Valley	3,547	3,509	38	50,834
Barstow	1,103	1,048	55	99,124
Butte	6,334	6,232	93	83,616
Cabrillo	6,937	6,655	255	450,420
Cerritos	13,497	13,097	329	508,331
Chaffey	7,852	7,655	197	240,680
Citrus	5,948	5,752	181	276,137
Coachella Valley	3,744	3,619	92	149,749
Coast	35,494	34,742	752	1,069,257
Compton	3,975	3,444	531	680,987
Contra Costa	19,622	19,011	311	580,170
El Camino	14,749	14,369	380	592,179
Foothill	23,557	22,345	1,187	1,622,811
Fremont-Newark	4,557	4,421	136	243,793
Gavilan	2,290	2,201	66	114,783
Glendale	7,934	7,322	592	812,605
Grossmont	10,490	10,288	202	348,563
Hartnell	4,757	4,590	129	209,526
Imperial	3,016	2,940	76	131,860
Kern	11,073	10,585	333	240,041
Lake Tahoe	614	601	13	19,015
Lassen	2,297	2,184	113	141,365
Long Beach	16,239	15,441	383	348,001
Los Angeles	71,881	69,931	1,611	3,260,566
Los Rios	27,705	26,482	788	1,479,162
Marin	7,817	7,602	182	288,508
Mendocino-Lake	1,433	1,425	8	19,068
Merced	6,029	5,782	235	250,356
Mira Costa	4,562	4,470	87	137,516
Monterey Peninsula	5,539	5,241	273	427,043
Mt. San Antonio	14,355	14,153	192	300,561
Mt. San Jacinto	1,593	1,535	58	65,942
Napa	4,894	4,814	78	154,459
North Orange	26,909	26,359	453	758,669
Palomar	10,967	10,548	375	471,407
Palo Verde	329	316	13	12,376
Pasadena Area	15,410	14,405	986	1,576,600
Peralta	20,388	19,968	221	293,289
Rancho Santiago	15,860	15,075	527	723,044
Redwoods	5,658	5,562	96	134,720
Rio Hondo	8,375	7,458	448	497,677
Riverside	8,643	8,498	145	239,495

District	Apportionment ADA Total	Attendance Hours Converted to ADA Nonresident	Nonresident Tuition Charged
Saddleback	13,007	12,805	199	$ 326,347
San Bernardino	11,415	11,027	223	329,532
San Diego	36,439	35,337	720	1,223,553
San Francisco	33,441	32,457	638	903,102
San Joaquin Delta	10,844	10,087	629	836,746
San Jose	11,530	10,054	962	1,851,082
San Luis Obispo	3,737	3,629	108	163,018
San Mateo	17,308	16,452	561	892,742
Santa Barbara	9,016	8,723	293	376,372
Santa Clarita	1,914	1,862	52	31,627
Santa Monica	11,598	10,875	718	1,206,691
Sequoias	5,257	5,166	91	59,334
Shasta-Te-Tr	5,820	5,767	38	48,344
Sierra	5,578	5,524	54	111,258
Siskiyou	1,684	1,569	115	128,200
Solano	5,560	5,198	138	220,765
Sonoma	12,607	12,244	262	389,647
South County	10,320	10,091	177	285,108
State Center	11,911	11,552	298	438,678
Sweetwater	8,297	7,920	377	637,725
Ventura	16,991	16,590	250	401,244
Victor Valley	2,303	2,248	55	82,921
West Hills	1,256	1,192	64	66,597
West Kern	715	597	118	142,708
West Valley	13,277	12,685	357	528,927
Yosemite	10,029	9,807	207	366,179
Yuba	5,929	5,844	79	106,138

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